

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

RALPH JOSEPH MATHERS,

Plaintiff,

v.

TESORO REFINING AND MARKETING
COMPANY, a foreign corporation; BRAND
SCAFFOLD BUILDERS INC., a foreign
corporation,

Defendants.

CASE NO. C05-172BHS

ORDER GRANTING DEFENDANTS'
MOTION TO OBTAIN UPDATED
MEDICAL RECORDS

This matter comes before the Court on Defendants' Motion to Obtain Updated Medical Records (Dkt. 47). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

This matter was originally set for trial on June 26, 2006, but was continued several times. Dkt. 11; Dkt. 22 (October 16, 2006, trial date); Dkt. 35 (March 12, 2007); Dkt. 37 (September 10, 2007); Dkt. 39 (November 5, 2007); Dkt. 43 (May 12, 2008). The last discovery deadline in this matter was August 10, 2006. Dkt. 25.

On December 19, 2007, Defendants' counsel wrote a letter to Plaintiff's counsel requesting that Plaintiff Ralph Joseph Mathers sign releases to allow Defendants to obtain

1 updated medical records. Dkt. 53, Exh. C at 23. Defendants requested a response within ten
2 business days but apparently made no further attempt to obtain the releases until February 12,
3 2008. *See id.*; Dkt. 53, Exh. D at 58. Again, Defendants did not receive a response to their
4 February 12, 2008, letter but made no further attempt to secure the releases until April 8, 2008,
5 when counsel for all parties conferred by telephone and were unable to resolve this matter
6 without court intervention. *See* Dkt. 53 at 2. Defendants now move to obtain updated medical
7 records. Dkt. 47. Though not captioned as such, the motion essentially seeks to compel
8 production of updated medical records.

9 II. DISCUSSION

10 Federal Rule of Civil Procedure 26 governs discovery and provides, in part, as follows:

11 Parties may obtain discovery regarding any nonprivileged matter that
12 is relevant to any party's claim or defense--including the existence,
13 description, nature, custody, condition, and location of any documents or
14 other tangible things and the identity and location of persons who know of
15 any discoverable matter. For good cause, the court may order discovery of
16 any matter relevant to the subject matter involved in the action. Relevant
17 information need not be admissible at the trial if the discovery appears
18 reasonably calculated to lead to the discovery of admissible evidence. All
19 discovery is subject to the limitations imposed by Rule 26(b)(2)(C).

16 Fed. R. Civ. P. 26(b)(1). Discovery must be limited if the Court determines that the discovery
17 sought is unreasonably cumulative or duplicative or is obtainable from a more convenient, less
18 burdensome, or less expensive source; that the seeking party has had ample opportunity to obtain
19 the information sought; or that the burden or expense of the discovery request outweighs its
20 likely benefit. Fed. R. Civ. P. 26(b)(2)(C).

21 If a party fails to answer an interrogatory or a request for production, the party may move
22 to compel disclosure pursuant to Federal Rule of Civil Procedure 37. Fed. R. Civ. P. 37(a)(3)(B).
23 The motion must certify that the parties have made a good faith effort to confer and resolve the
24 dispute themselves. Fed. R. Civ. P. 37(a)(1). A good faith effort to confer "requires a face-to-
25 face meeting or a telephone conference." Local Rule CR 37(a)(2)(A). In this case, the parties
26 conferred by telephone.

1 While the Court is sympathetic with Defendants' need to update medical records received
2 more than two years ago, Defendants fail to justify their dilatory efforts at obtaining the updated
3 records. Plaintiff is willing to provide updated medical records for physicians who have
4 continued to treat Plaintiff since medical records were last provided but contends that he has not
5 seen the vast majority of his medical providers in the years since Defendants last obtained
6 Plaintiff's medical records. Dkt. 56 at 2. Plaintiff asserts no prejudice, however, in complying
7 with Defendants' request. Therefore, the motion is granted, and Plaintiff shall forthwith
8 authorize the release of the requested medical records.

9 III. ORDER

10 Therefore, it is hereby

11 **ORDERED** that Defendants' Motion to Obtain Updated Medical Records (Dkt. 47) is
12 **GRANTED.**

13 DATED this 28th day of April, 2008.

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17 BENJAMIN H. SETTLE
18 United States District Judge
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